

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

NOVADAQ TECHNOLOGIES INC. )

Plaintiffs, )

v. )

KARL STORZ GMBH &amp; CO. KG., et al., )

Defendants. )

Case No. 5:14-cv-04853-PSG

**OMNIBUS ORDER RE: MOTIONS  
TO SEAL****(Re: Docket Nos. 124, 128, 135, 136,  
143, 149, 150, 151, 160)**

Before the court are nine administrative motions to seal various documents. “Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’”<sup>1</sup> Accordingly, when considering a sealing request, “a ‘strong presumption in favor of access’ is the starting point.”<sup>2</sup> Parties seeking to seal judicial records relating to dispositive motions bear the burden of overcoming the presumption with “compelling reasons” that outweigh the general history of access and the public policies favoring disclosure.<sup>3</sup>

<sup>1</sup> *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n. 7 (1978)).

<sup>2</sup> *Id.* (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)).

<sup>3</sup> *Id.* at 1178-79.

1 However, “while protecting the public's interest in access to the courts, we must remain  
 2 mindful of the parties' right to access those same courts upon terms which will not unduly harm  
 3 their competitive interest.”<sup>4</sup> Records attached to nondispositive motions therefore are not subject  
 4 to the strong presumption of access.<sup>5</sup> Because the documents attached to nondispositive motions  
 5 “are often unrelated, or only tangentially related, to the underlying cause of action,” parties moving  
 6 to seal must meet the lower “good cause” standard of Rule 26(c).<sup>6</sup> As with dispositive motions, the  
 7 standard applicable to nondispositive motions requires a “particularized showing”<sup>7</sup> that “specific  
 8 prejudice or harm will result” if the information is disclosed.<sup>8</sup> “Broad allegations of harm,  
 9 unsubstantiated by specific examples of articulated reasoning” will not suffice.<sup>9</sup> A protective order  
 10 sealing the documents during discovery may reflect the court’s previous determination that good  
 11 cause exists to keep the documents sealed,<sup>10</sup> but a blanket protective order that allows the parties to  
 12 designate confidential documents does not provide sufficient judicial scrutiny to determine whether  
 13 each particular document should remain sealed.<sup>11</sup>

14 In addition to making particularized showings of good cause, parties moving to seal  
 15 documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to  
 16 Civ. L.R. 79-5(b), a sealing order is appropriate only upon a request that establishes the document

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 19 <sup>4</sup> *Apple Inc. v. Samsung Electronics Co., Ltd.*, 727 F.3d 1214, 1228-29 (Fed. Cir. 2013).

20 <sup>5</sup> *See id.* at 1180.

21 <sup>6</sup> *Id.* at 1179 (internal quotations and citations omitted).

22 <sup>7</sup> *Id.*

23 <sup>8</sup> *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002);  
 24 *see* Fed. R. Civ. P. 26(c).

25 <sup>9</sup> *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992).

26 <sup>10</sup> *See Kamakana*, 447 F.3d at 1179-80.

27 <sup>11</sup> *See* Civ. L.R. 79-5(d)(1)(A) (“Reference to a stipulation or protective order that allows a party to  
 28 designate certain documents as confidential is not sufficient to establish that a document, or  
 portions thereof, are sealable.”).

is “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under the law.” “The request must be narrowly tailored to seek sealing only of sealable material, and must conform with Civil L.R. 79-5(d).”<sup>12</sup> “Within 4 days of the filing of the Administrative Motion to File Under Seal, the Designating Party must file a declaration as required by subsection 79-5(d)(1)(A) establishing that all of the designated material is sealable.”<sup>13</sup>

With these standards in mind, the courts rules on the instant motions as follows:

<u>Motion to Seal</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reason/Explanation</u>
124-5	Exhibit A to Welsh Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
124-7	Exhibit E to Welsh Declaration	SEALED.	Sealed portions narrowly tailored to confidential business information.
124-9	Exhibit F to Welsh Declaration	Page 2 SEALED; remainder UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
124-11	Exhibit G to Welsh Declaration	UNSEALED.	Not narrowly tailored to confidential business information.
124-13	Exhibit I to Welsh Declaration	UNSEALED.	Not narrowly tailored to confidential business information.

<sup>12</sup> Civ. L.R. 79-5(b). In part, Civ. L.R. 79-5(d) requires the submitting party to attach a “proposed order that is narrowly tailored to seal only the sealable material” which “lists in table format each document or portion thereof that is sought to be sealed,” Civ. L.R. 79-5(d)(1)(b), and an “unredacted version of the document” that indicates “by highlighting or other clear method, the portions of the document that have been omitted from the redacted version.” Civ. L.R. 79-5(d)(1)(d).

<sup>13</sup> Civ. L.R. 79-5(e)(1). The Civil Local Rules have recently been amended shortening the time available to the designating party to file a supporting declaration from seven days to four days. As this rule change was only recently implemented the court applies the prior form of Civ. L.R. 79-5 for the purposes of this order.

1	128-4	Novadaq's Opposition to Karl Storz's Motion for Leave to File Motion for Reconsideration	UNSEALED.	No supporting declaration filed.
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3	128-6	Declaration of Jennifer Lee Taylor	UNSEALED.	No supporting declaration filed.
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5	128-8	Exhibit 1 to Taylor Declaration	UNSEALED.	Not narrowly tailored to confidential business information and no supporting declaration filed.
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8	128-10	Exhibit 2 to Taylor Declaration	UNSEALED.	Not narrowly tailored to confidential business information and no supporting declaration filed.
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11	128-12	Exhibit 3 to Taylor Declaration	UNSEALED.	Not narrowly tailored to confidential business information and no supporting declaration filed.
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15	135-4	Karl Storz's Reply to Motion for Leave to File Motion for Reconsideration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
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17	135-6	Declaration of Walter B. Welsh	Designations highlighted in yellow at 1:13-15 SEALED; remainder UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
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20	135-8	Exhibit K to Welsh Declaration	UNSEALED.	Not narrowly tailored to confidential business information.
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22	136-3	Novadaq's Opposition to Karl Storz's Motion for Leave to File Motion for Reconsideration	UNSEALED.	No supporting declaration filed.
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25	136-5	Exhibit A to Taylor Declaration	UNSEALED.	No supporting declaration filed.
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27	143-4	Novadaq's Opposition to Karl Storz's Motion to Extend Time	UNSEALED.	No supporting declaration filed.
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1	143-6	Exhibit L to Taylor Declaration	UNSEALED.	No supporting declaration filed.
2	143-8	Exhibit M to Taylor Declaration	UNSEALED.	No supporting declaration filed.
3	149-4	KS' Motion to Compel Depositions	UNSEALED.	Not narrowly tailored to confidential business information.
4	149-6	Exhibit A to Welsh Declaration	UNSEALED.	Not narrowly tailored to confidential business information.
5	149-8	Exhibit L to Welsh Declaration	UNSEALED.	Not narrowly tailored to confidential business information.
6	149-10	Exhibit O to Welsh Declaration	UNSEALED.	Not narrowly tailored to confidential business information.
7	149-12	Exhibit P to Welsh Declaration	UNSEALED.	Not narrowly tailored to confidential business information.
8	149-14	Exhibit T to Welsh Declaration	UNSEALED.	Not narrowly tailored to confidential business information.
9	149-16	Exhibit U to Welsh Declaration	UNSEALED.	Not narrowly tailored to confidential business information.
10	150-4	Novadaq's Motion for Rule 37(b)(2) Sanctions for Defendants' Violation of Four Discovery Orders	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
11	150-6	[PROPOSED] Order Granting Novadaq's Motion for Rule 37(b)(2) Sanctions for Defendants' Violation of Four Discovery Orders	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
12	151-1	Declaration of Jennifer Lee Taylor in support of Novadaq's Motion for Rule 37(b)(2) Sanctions for Defendants' Violation of Four Discovery Orders	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.

151-2	Exhibit H to Taylor Declaration	Designations redacted in black at Docket No. 169-3 SEALED.	Sealed portions narrowly tailored to confidential business information.
151-3	Exhibit I to Taylor Declaration	Designations redacted in black at Docket No. 169-4 SEALED.	Sealed portions narrowly tailored to confidential business information.
151-5	Declaration of Joyce Liou in support of Novadaq's Motion for Rule 37(b)(2) Sanctions for Defendants' Violation of Four Discovery Orders	UNSEALED.	Not narrowly tailored to confidential business information.
151-6	Exhibit A to Liou Declaration	UNSEALED.	No supporting declaration filed.
151-7	Exhibit B to Liou Declaration	UNSEALED.	No supporting declaration filed.
151-8	Exhibit C to Liou Declaration	UNSEALED.	No supporting declaration filed.
151-9	Exhibit D to Liou Declaration	UNSEALED.	No supporting declaration filed.
151-10	Exhibit F to Liou Declaration	UNSEALED.	No supporting declaration filed.
151-11	Exhibit G to Liou Declaration	SEALED.	Sealed portions narrowly tailored to confidential business information.
151-12	Exhibit H to Liou Declaration	SEALED.	Sealed portions narrowly tailored to confidential business information.
151-14	Exhibit K to Liou Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.

151-15	Exhibit O to Liou Declaration	UNSEALED.	Not narrowly tailored to confidential business information; Novadaq shall re-file with highlights to more narrowly tailor by July 8, 2015.
151-16	Exhibit P to Liou Declaration	UNSEALED.	Not narrowly tailored to confidential business information; Novadaq shall re-file with highlights to more narrowly tailor by July 8, 2015.
151-17	Exhibit T to Liou Declaration	UNSEALED.	Not narrowly tailored to confidential business information; Novadaq will re-file with highlights to more narrowly tailor by July 8, 2015.
151-18	Exhibit U to Liou Declaration	UNSEALED.	Not narrowly tailored to confidential business information; Novadaq shall re-file with highlights to more narrowly tailor by July 8, 2015.
151-19	Exhibit Y to Liou Declaration	UNSEALED.	Not narrowly tailored to confidential business information.
160-4 (originally filed at 100-3)	Novadaq's Opposition to Defendants' Motion for Protective Order Regarding Dr. Storz	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
160-6 (originally filed at 100-8)	Exhibit 4 to Foran Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
160-8 (originally filed at 100-11)	Exhibit 7 to Foran Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.

1	160-10 (originally filed at 100-12)	Exhibit 8 to Foran Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
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3	160-12 (originally filed at 100-14)	Exhibit 10 to Foran Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
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5	160-14 (originally filed at 100-15)	Exhibit 11 to Foran Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
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7	160-16 (originally filed at 100-16)	Exhibit 12 to Foran Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
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9	160-23 (originally filed at 100-21)	Exhibit 20 to Foran Declaration	SEALED.	Sealed portions narrowly tailored to confidential business information.
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11	160-24 (originally filed at 100-21)	Exhibit 20 to Foran Declaration	SEALED.	Sealed portions narrowly tailored to confidential business information.
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13	160-25 (originally filed at 100-21)	Exhibit 20 to Foran Declaration	SEALED.	Sealed portions narrowly tailored to confidential business information.
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15	160-26 (originally filed at 100-21)	Exhibit 20 to Foran Declaration	SEALED.	Sealed portions narrowly tailored to confidential business information.
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17	160-27 (originally filed at 100-21)	Exhibit 20 to Foran Declaration	SEALED.	Sealed portions narrowly tailored to confidential business information.
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19	160-28 (originally filed at 100-21)	Exhibit 20 to Foran Declaration	SEALED.	Sealed portions narrowly tailored to confidential business information.
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160-30 (originally filed at 100-22)	Exhibit 21 to Foran Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
160-32 (originally filed at 100-23)	Exhibit 22 to Foran Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
160-34 (originally filed at 100-24)	Exhibit 23 to Foran Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
160-36 (originally filed at 100-25)	Exhibit 24 to Foran Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
160-38 (originally filed at 100-27)	Exhibit 26 to Foran Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.
160-40 (originally filed at 100-29)	Exhibit 28 to Foran Declaration	Designations highlighted in yellow SEALED.	Sealed portions narrowly tailored to confidential business information.

**SO ORDERED.**

Dated: July 1, 2015

  
 PAUL S. GREWAL  
 United States Magistrate Judge